

REPRESENTATIVE FOR PETITIONER  
Jeffrey T. Jones, Jr.

REPRESENTATIVE FOR RESPONDENT  
Jack C. Birch

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**BEFORE THE INDIANA BOARD  
OF TAX REVIEW**

MARINELAND GARDENS COMMUNITY ASSOCIATION, INC.	)	
	)	
	)	Petition Nos.: <i>see</i> attached
Petitioner,	)	
	)	
v.	)	Parcel Nos.: <i>see</i> attached
	)	
KOSCIUSKO COUNTY ASSESSOR	)	
	)	Assessment Years: 2012-2013
Respondent.	)	
	)	

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**May 12, 2016**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Introduction**

1. Marineland Gardens Community Association sought a property tax exemption under Ind. Code § 6-1.1-10-16(c)(3), which exempts certain land owned by nonprofit entities established for purposes of retaining and preserving land and water for their natural characteristics. Marineland Gardens was not originally formed for those purposes; rather,

it was formed to promote the interests of property owners within the Marineland Gardens subdivision. Although Marineland later amended its articles to specifically include maintaining common areas and water to preserve their natural characteristics as a stated corporate purpose, that amendment came after the assessment dates at issue in these appeals. Under those circumstances, Marineland did not prove it was entitled to an exemption.

### **Procedural History**

2. Marineland applied to exempt 10 parcels for the 2012 and 2013 assessment years. The Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) denied those applications on July 27, 2012, and October 8, 2013, respectively. Marineland responded by timely filing Form 132 petitions with the Board.
3. On December 1, 2015, our designated administrative law judge, David Pardo (“ALJ”), held a hearing on Marineland’s petitions. Neither he nor the Board inspected the parcels.
4. Rogers Steuer, Marineland’s president, and Steve Anderson, a member of Marineland’s board of directors, testified under oath.
5. The Assessor did not offer any exhibits. Marineland offered the following exhibits, all which were admitted without objection:
  - Petitioner’s Exhibit 1: *Marineland Gardens Community Ass’n v. Kosciusko County Ass’r* (IBTR Sep’t 7, 2012),
  - Petitioner’s Exhibit 2: Marineland’s By-Laws, Restrictions and General Policy, Revision Date June 30, 2009,
  - Petitioner’s Exhibit 3: Printout from the Indiana Secretary of State’s office concerning Marineland’s status,
  - Petitioner’s Exhibit 4: Transcript from Board hearing on June 13, 2012,
  - Petitioner’s Exhibit 5: Plat of Marineland Gardens,
  - Petitioner’s Exhibits 6-16: Photographs of the subject parcels,
  - Petitioner’s Exhibit 17: Marineland’s Certificate of Incorporation and Articles of Incorporation,
  - Petitioner’s Exhibit 18: Articles of Amendment to the Articles of Incorporation (Nonprofit), adopted November 22, 2012,
  - Petitioner’s Exhibit 19: Marineland’s report for calendar years 1967 & 1968,

Petitioner's Exhibit 20: March 27, 2012, and March 16, 2012 letters from Greg Biberdorf to Kay Young and David Maenhout.

6. The record also includes all pleadings and documents filed in Marineland's appeals, all orders and notices issued by the Board or its ALJ, and a digital recording of the December 1, 2015 hearing.

### **Findings of Fact**

7. Marineland was previously denied an exemption for 2009-2010 and appealed to us. We found against Marineland and the Indiana Tax Court affirmed our determination on judicial review. The same two witnesses testified at our hearing on the 2009-2010 appeals as testified at December 1, 2015 hearing on the current appeals. Marineland offered a transcript from the first hearing as an exhibit and asked us to consider the testimony from both hearings in deciding the current appeals. *See Pet'r Exs. 1, 4; see also, Marineland Gardens Community Ass'n v. Kosciusko County Ass'r*, 26 N.E.2d 1087 (Ind. Tax Ct. 2015).
8. Marineland was organized in 1967 as a not-for-profit domestic corporation. It is the homeowners' association for the Marineland Gardens subdivision, which is situated on Lake Wawasee. Its members are the lot owners from the subdivision. *Pet'r Exs. 5, 17*.
9. Marineland's articles of incorporation describe its purposes as follows:
  - (a) To protect, advance, promote and develop the best interests of taxpaying owners of property located in the Plat of Marineland Gardens. . . . To protect Marineland Gardens against injury or desecration of any kind and character and to assist in all matters to improve living conditions around said area.
  - (b) To own, hold, acquire, lease, exchange, sell and otherwise deal in and dispose of, property, real and personal, tangible and intangible, for the purpose of furthering and carrying into effect the foregoing objects and purposes.

*Pet'r Ex. 17, Articles of Incorporation at numbered ¶ 2.* Those articles also provide that Marineland can exercise and enjoy all other rights, powers, and privileges granted by

Indiana's then existing not-for-profit corporation statute as well as any powers granted through any amendments or supplements to that statute. The articles further provide that the clauses shall be construed as independent powers and purposes, and that "enumeration of specific powers and purposes shall not be construed to limit or restrict in any manner the meaning of any general terms . . . nor shall the expression of one thing be deemed to exclude another not expressed, although it be of like nature." *Id.*

10. Marineland also offered a document that appears to be a report filed with the Indiana Secretary of State for 1967 and 1968. In the section of the report reserved for indicating the corporation's purpose, Marineland wrote: "To protect, advance and promote the best interests of owners of property located in the Plat of Marineland Gardens." *Pet'r Ex. 19.* Elsewhere in the report, Marineland indicated it owned nine of the ten parcels now under appeal. *Id.*

11. On November 22, 2014, Marineland adopted an amendment to its articles. According to that amendment, "[t]he exact text of Article(s) Three, The 'Purpose' Clause," now reads as follows:

To protect, advance, promote and maintain the common areas and facilities within the plat of Marineland Gardens . . .; for the protection of property and community values of properties located within the plat of Marineland Gardens . . .; and for the maintenance, preservation and retention of the undeveloped common areas and water located within the plat of Marineland Gardens . . . to preserve their natural characteristics.

*Pet'r Ex. 18.*

12. When asked why the board of directors proposed amending Marineland's articles, Roger Steuer, Marineland's president, testified: "I think the Association has always [inaudible] long term responsibilities of these properties back from 1967 [has] always protected these properties, we've never done improvements to them. So to me, we needed to state this from our members to back up why we're doing what we're doing, protect and preserve them." *Steuer testimony.*

13. Steuer acknowledged that the 10 parcels under appeal are common areas for the benefit of Marineland's members. He likewise acknowledged that they are no different from the common areas in any other subdivision in the sense that members need them to access the channel and swimming areas. Some of the parcels are walking paths between different sections, while others provide access to piers and a boat ramp, and still others can be used for picnics and other recreational activities. Members use the parcels, and Marineland does nothing to prevent the public from using them as well. For example, people come to two of the parcels—lots 542 and 543 on the subdivision plat—to watch fireworks and cook out. They also swim off the pier and fish in the channel. *Steuer testimony, Anderson testimony; see also, Pet'r Ex. 4 at 522, 533-34, 548-49; 559-66.*<sup>1</sup>
  
14. None of the parcels have buildings, although one had been zoned for commercial use and Marineland bought it to avoid having a commercial building constructed on it. Marineland added gravel to that parcel so people could use it as a parking area to access a boat ramp. There is a hydrant between lots 542 and 543 so fire departments can draw water from the channel. Lot 542 has a pier. Another parcel has a seawall and piers. Other parcels have utility poles with lighting. The parcels all have at least some grass. Marineland mows some but not others. Some parcels also have trees. *Steuer testimony; Anderson testimony; Pet'r Ex. 4 at 520-21, 531-36, 535-36, 554-55, 570, 572-73; Pet'r Exs. 6-16.*
  
15. At the hearing on its 2009-2010 appeals, Marineland did not offer any organizational documents showing the purposes for which it was established. It instead relied on how the parcels were used, pointing to the facts that the parcels were not improved with structures, that it did not operate any business on parcels, that it allowed members and the public unobstructed access to the parcels for fishing and other activities, that it did not restrict geese and other wildlife from wandering on the parcels, and that it had applied for

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<sup>1</sup> Exhibit 4 is the transcript from our hearing on Marineland's 2009-2010 appeals. It includes two sets of sequential numbers: (1) numbers assigned by the court reporter who prepared the transcript (1-120), and (2) numbers that appear to denote the transcript's location within the record on judicial review (467-586). We use the second set in our pinpoint citations.

a grant to dredge the channel in January 2012.<sup>2</sup> See *Pet'r Ex. 4* at 520-21, 531-32, 535-36, 554, 559-60, 570, 572-73.

16. Steuer and Anderson largely reiterated those facts in their testimony at the December 1, 2015 hearing. They also offered more detail about the dredging project. Marineland and another property owners' association were awarded a grant from the Indiana Department of Natural Resources' Lake and River Enhancement Program for a dredging project designed to protect and preserve boating and fishing on Lake Wawasee. The project included dredging a channel that runs through Marineland Gardens into the lake. The channel is not a natural feature; it was originally dug in the 1960s, presumably by a developer. To Steuer's knowledge, the channel had not previously been dredged, and the project dug up 14,000 cubic yards of sediment. Before the dredging, the water was murky from boats turning up mud. Now it is clearer, and Steuer can see far more fish moving up and down the channel. *Steuer testimony; Anderson testimony; Pet'r Exs. 5, 20.*

### Conclusions of Law and Analysis

17. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citing Ind. Code § 6-1.1-2-1). A taxpayer bears the burden of proving its property qualifies for exemption. *Id.*
18. Marineland claims that the subject parcels are exempt under Ind. Code § 6-1.1-10-16(c)(3), which provides the following:
- (c) A tract of land, including the campus and athletic grounds of an educational institution, is exempt from property taxation if:
- ...
- (3) the tract:

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<sup>2</sup> As the Tax Court explained, Marineland's grant application was irrelevant because it occurred after the assessment dates at issue in those appeals. *Marineland Gardens*, 26 N.E.3d at 1090 n.3; see also, *Pet'r Ex. 1* at 22 (explaining that Marineland applied for the grant well past the assessment dates and more than 40 years after Marineland was organized).

- (A) is owned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics;
- (B) does not exceed five hundred (500) acres; and
- (C) is not used by the nonprofit entity to make a profit.

I.C. § 6-1.1-10-16(c)(3). Because the statute does not define “retaining” or “preserving,” those words must be given their plain and ordinary meaning as found in a dictionary: “retaining” means “to hold secure or intact (as in a fixed place or condition)” and “preserving” means “to keep safe from injury, harm, or destruction’ or ‘to remain fresh or in original state.” *Marineland Gardens*, 26 N.E.2d at 1090 n.4 (quoting WEBSTER’S THIRD NEW INT’L DICTIONARY 1794, 1938 (2002 ed.))

19. The parcels at issue total less than 500 acres and nobody claims they were used to make a profit. Thus, this case turns on whether Marineland was established for the purpose of retaining and preserving land and water for their natural characteristics.
20. We found against Marineland in its 2009-2010 appeals because it did not show it was established for that purpose. *See Pet’r Ex. 1 at ¶¶ 20-24*. Marineland did not offer any organizational documents showing the purposes for which it was organized, and we found that its evidence of how it treated the parcels was ambiguous and contradictory. *Id.* The Tax Court affirmed, explaining that even if a property’s current or longstanding use could prove why an organization was established, Marineland’s evidence was contradictory. *Marineland Gardens*, 26 N.E.3d at 1090.
21. Marineland’s case is even weaker this time. In the current appeals, Marineland offered its original articles of incorporation, which were in effect during the assessment years at issue. They reference only one specific purpose: “to protect, advance, promote and develop the best interests of” the subdivision’s property owners. In short, the parcels are common areas and Marineland holds them for the same purposes as any other homeowners’ association holds common areas—for the benefit of its members. Steuer acknowledged as much.

22. We recognize that Marineland’s articles of incorporation reserve all general powers and purposes available to an Indiana not-for-profit corporation, and those reserved purposes might well include retaining land and water for their natural characteristics. But that general reservation does not entitle Marineland to the exemption it seeks. Otherwise, the elements of the exemption would have no meaning—virtually every nonprofit corporation would be entitled to the exemption.
  
23. Marineland, however, points to its 2014 articles of amendment. It also points to its treatment of the parcels, nine of which it has owned since at least 1967-1968. In particular, it points out that (1) aside from mowing some of the parcels and laying down gravel on another, it has done little to alter them, (2) it has allowed the public and wildlife, especially geese, to access the parcels, and (3) it dredged the channel. According to Marineland, the amendment simply clarifies what its longstanding treatment of the common areas has shown was its purpose all along.
  
24. We disagree. The amendment post-dates the assessment years under appeal, and it cannot retroactively alter the overriding purpose for which Marineland was established. We are even less inclined to view Marineland’s other evidence as somehow proving the purposes for which it was established than we were in deciding the previous appeals. In those appeals, Marineland had not offered its relevant organizational documents, and the Tax Court assumed, without deciding, that a corporation’s longstanding actions might be used to show the purpose for which it was established. We now have Marineland’s articles of incorporation before us, and they do not even vaguely reference preserving land and water for their natural characteristics. Instead, both those articles and the 1967-1968 report show Marineland was established primarily to promote the interests of its members, whatever those interests might be. If the members’ interests required disturbing the common areas’ natural characteristics, there is nothing in its original articles that would have prevented Marineland from doing so, or even cautioned against it.

25. Regardless, as we explained in our earlier determination, Marineland's treatment of the common areas was a mixed bag at best. On one hand, Marineland actively altered some of the parcels' characteristics. It improved one parcel by laying down gravel. Others have utility and light poles. Another has a seawall and piers. On the other hand, Marineland does not conduct business activities or permit vendors on the parcels. And it does not restrict geese and other animals from gathering on them. Many of the parcels have grass and trees, and Marineland does little to disturb those plants. Those last few things are at least arguably consistent with preserving the land for its natural characteristics. But they are also consistent with promoting the members' best interests by maintaining their access to the water and to recreational activities, such as boating, walking, and fishing.
26. Marineland makes much of the dredging project. That project might have helped preserve Lake Wawasee's natural characteristics. But Steuer and Anderson focused mainly on how the dredging affected the channel. As Steuer acknowledged, the channel is not a natural characteristic; to the contrary, a developer dug it so boats could access the lake. Like the other activities, the channel dredging did as much or more to promote the recreational interests of Marineland's members as it did to preserve the water's natural characteristics.
27. We do not mean to imply that allowing, or even actively encouraging, recreational activities on land or water necessarily disqualifies an entity that was established for the purpose of preserving the natural characteristics of land and water from receiving an exemption. One of the reasons to retain and preserve land and water for their natural characteristics is so people can admire and enjoy nature. But Marineland's relatively hands-off treatment of its common areas does not show it was established to preserve land and water for their natural characteristics, where (1) its organizing documents do not even hint at such a purpose, and (2) its treatment of the parcels is consistent with the non-exempt purposes expressly stated in those organizing documents.

**SUMMARY OF FINAL DETERMINATION**

28. Because Marineland failed to meet its burden of proving its entitlement to an exemption for the 2012 and 2013 assessment years, we find for the Assessor.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

## 2012 Appeals

Petition Number	Petitioner	Parcel
43-025-12-2-8-00001	Marineland Gardens Community Assoc..	43-04-26-400-060.000-025
43-025-12-2-8-00002	Marineland Gardens Community Assoc.	43-04-26-400-271.000-025
43-025-12-2-8-00003	Marineland Gardens Community Assoc.	43-04-26-400-434.000-025
43-025-12-2-8-00004	Marineland Gardens Community Assoc.	43-04-26-400-270.000-025
43-025-12-2-8-00005	Marineland Gardens Community Assoc.	43-04-26-400-424.000-025
43-025-12-2-8-00006	Marineland Gardens Community Assoc.	43-04-26-400-144.000-025
43-025-12-2-8-00007	Marineland Gardens Community Assoc.	43-04-26-400-064.000-025
43-025-12-2-8-00008	Marineland Gardens Community Assoc.	43-04-26-400-246.000-025
43-025-12-2-8-00009	Marineland Gardens Community Assoc.	43-04-26-400-006.000-025
43-025-12-2-8-00010	Marineland Gardens Community Assoc.	43-04-26-400-035.000-025

## 2013 Appeals

Petition Number	Petitioner	Parcel
43-025-13-2-8-00001	Marineland Gardens Community Assoc.	43-04-26-400-064.000-025
43-025-13-2-8-00002	Marineland Gardens Community Assoc.	43-04-26-400-144.000-025
43-025-13-2-8-00003	Marineland Gardens Community Assoc.	43-04-26-400-424.000-025
43-025-13-2-8-00004	Marineland Gardens Community Assoc.	43-04-26-400-270.000-025
43-025-13-2-8-00005	Marineland Gardens Community Assoc.	43-04-26-400-060.000-025
43-025-13-2-8-00006	Marineland Gardens Community Assoc.	43-04-26-400-271.000-025
43-025-13-2-8-00007	Marineland Gardens Community Assoc.	43-04-26-400-434.000-025
43-025-13-2-8-00008	Marineland Gardens Community Assoc.	43-04-26-400-006.000-025
43-025-13-2-8-00009	Marineland Gardens Community Assoc.	43-04-26-400-035.000-025
43-025-13-2-8-00010	Marineland Gardens Community Assoc.	43-04-26-400-246.000-025